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In The

Supreme Court of the United States

FALL TERM, 1968

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LOUIS ANTHONY LOGNER

Respondent

v.

STATE OF NORTH CAROLINA

Petitioner

PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Your Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals in the case of LOUIS ANTHONY LOGNER vs. STATE OF NORTH CAROLINA, entered on March 21, 1968.

CITATION TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circiut is reported as LOUIS ANTHONY LOGNER v. STATE OF NORTH CAROLINA, ... F. 2d ..... (4th Cir. 1968) and is printed as Appendix D to this petition.

JURISDICTION

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit was entered on March 21, 1968. (See Appendix D).

The jurisdiction of this Court is invoked under 28 United States Code, Section 1254 (1).

QUESTIONS PRESENTED

I. WHETHER OR NOT A CONFESSION TO CRIME OFFERED BY AN INDIVIDUAL OF HIS OWN VOLITION, WHILE IN CUSTODY FOR AN UNRELATED OFFENSE, AND IN THE ABSENCE OF COERCION IN ANY FORM, BECOMES INVOLUNTARY AND THEREFORE INADMISSIBLE DUE TO THE FACT THAT SAID PERSON WAS UNDER THE INFLUENCE OF INTOXICATING LIQUOR AT THE TIME HE ELECTED TO ADMIT GUILT?

II. WHETHER SECTION 2254, TITLE 28, UNITED STATES CODE, AS AMENDED EFFECTIVE NOVEMBER 2, 1966, IS CONTROLLING UPON THE DECISION IN THE CASE AT BAR? AND IF IT IS SO CONTROLLING, THEN DID THE FEDERAL DISTRICT COURT EXCEED ITS STATUTORY JURISDICTION AND POWER?

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides as follows:

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

> wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution of the United States provides as follows:

> "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

STATUTORY PROVISION INVOLVED

Section 2254, Title 28, United States Code, as amended effective November 2, 1966, provides as follows:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> (b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of

a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the state or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the fact finding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the sub-

ject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal Court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

(e) If the applicant challenges the sufficiency of the

evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(f) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

STATEMENT OF CASE

Louis Anthony Logner, at the July 28, 1965, Special Session of the Criminal Session of the Superior Court, Durham County, North Carolina, was tried under a Bill of Indictment charging the crime of safecracking, and was convicted by a jury of his peers. The defendant appealed to the Supreme Court of North Carolina, and that Court affirmed the lower Court's decision, finding no errors in the trial. 266 N. C. 238, 145 S. E. 2d 867 (1966). (Appendix A) The defendant then petitioned the Supreme Court of the United States for Certiorari. Certiorari being denied, *LOGNER v. NORTH CAROLINA* 384 U. S. 1013 (1966), Logner proceeded to file a petition with the United States District Court for the Middle District of North Carolina, praying for a Writ of Habeas Corpus. On October

20, 1966, the District Court held an evidentiary hearing to consider petitioner's prayer. An order was entered by the Court on November 29, 1966. The conviction and sentence of the state criminal defendant were vacated, and the Court further declared that unless the State of North Carolina retried Louis Anthony Logner, an order would be issued discharging him from custody. 260 F. Supp. 920, 970 (1966). (Appendix C)

In the interim between the evidentiary hearing and the granting of Habeas Corpus on November 29, 1966, by the United States District Court for the Middle District of North Carolina, Congress, in an effort to handle more expeditiously the number of petitions for habeas corpus by state prisoners amended Sections 2244 and 2254 of Title 28, United States Code. H. R. Rep. No. 1892, 89th Cong., 2nd Sess. 6-7 (1966); 12 *St. Louis U. L. J.* 74, 90 (1967); 34 *Brooklyn L. Rev* 247, 266 (1968). Said amendments effective as of November 2, 1966 embodied in Public Law 89-711, modified the jurisdiction of United States District Courts in cases where individuals in custody pursuant to the judgment of a State Court were applying for Habeas Corpus.

The Solicitor called the case of *STATE v. LOGNER* for re-trial at the April 17, 1967, Criminal Session, of the General Court of Justice, Superior Court Division of Durham County. The Honorable Chester R. Morris, Judge Presiding, declined to retry the defendant, and in addition ordered the Solicitor who had not been a party or served with any notice of the Federal Proceeding, to file a motion in the United States District Court for the Middle District of North Carolina, in order to intervene and have reopened the habeas corpus proceeding in which a decision had been entered earlier. A motion to that effect was filed June 8, 1967. At this time the District Court ordered the Solicitor to submit a brief on the various legal questions involved, and after reviewing the new legal briefs, the contentions of the parties, and the facts as adduced in the State trial, issued an additional Order and Opinion. (Appendix

F). This new, additional Order and Opinion, denied a rehearing, and re-affirmed the original decision.

In the Logner trial certain statements made by the defendant to law enforcement officers of his own volition were admitted into evidence after a full Voir Dire hearing held in the absence of the jury. (Appendix E) The State Court, a Court of competent jurisdiction, after a full plenary hearing on the merits of the factual issue regarding the voluntariness of the defendant's admissions, found as a matter of law and stated also in a written finding of fact, that the defendant's confession was freely, voluntarily, and knowingly made. (Appendix E) Logner's statement was also used as evidence against him in a second state trial for safecracking arising out of another incident. The Supreme Court of North Carolina again reviewed the confession and the circumstances surrounding it, and reaffirmed its previous finding of voluntariness. *STATE v. LOGNER*, 269 N. C. 550, 153 S. E. 2d 63 (1967). (Appendix B)

The United States District Court for the Middle District of North Carolina having found Logner's confession to be involuntary and the highest Court of the State of North Carolina having rendered two decisions *contra*, the State of North Carolina therefore decided to appeal to the United States Court of Appeals for the Fourth Circuit. On March 21, 1968, that Court, held that the record revealed no errors in either order and decision issued by the District Court. (Appendix D) From this adverse decision of the United States Fourth Circuit Court of Appeals, the State of North Carolina respectfully excepts, and does pray this Court to issue a Writ of Certiorari in order that the vitally important legal questions which currently have resulted in conflicting decisions in various jurisdictions might now be resolved.

REASONS FOR GRANTING THE WRIT

On issue of voluntariness of the confession.

(1) The decision of the United States Court of Appeals for the Fourth Circuit upon the legal question of the constitutional voluntariness of defendant Logner's confessions is *contra* to the two decisions of the North Carolina Supreme Court, made after full consideration of those same admissions.

(2) The holding by the United States Court of Appeals in the case of *LOGNER v. STATE OF NORTH CAROLINA*, is also in conflict with the recent constitutional decision of the highest court of the State of New York in *PEOPLE v. SCHOMPERT*, 19 N. Y. 2d 300, 270 N. Y. S. 2d 515 (1967).

(3) The resolution of the voluntariness issue by the Court of Appeals for the Fourth Circuit in *LOGNER v. STATE OF NORTH CAROLINA* is in conflict with decisions rendered by the United States Court of Appeals for the District of Columbia.

(4) The position taken by the United States Court of Appeals for the Fourth Circuit on the matter of the voluntariness of an uncoerced confession, given by a confessant under the influence of alcohol, which subsequently proves to be truthful and reliable, contradicts other notable state decisions, the spirit of the more stringent, but inapplicable test of voluntariness laid down by the Supreme Court of the United States in *MIRANDA v. ARIZONA*, 384 U. S. 486, 86 Sup. Ct. 1602, 16 L. Ed. 2d 694 (1966), and other authorities and scholars.

1. The decision of the United States Court of Appeals for the Fourth Circuit affirmed *per curiam* the disposition of the Logner case by the District Court for the Middle District of North Carolina and thus accepted *sub silentio* the reasoning employed by the lower court in arriving at the conclusion of law that the confession was involuntary. Apparently the District Court reasoned that when one becomes intoxicated or under the influence of alcohol it follows that he has lost control of his mental faculties and anyone not in full control of such

faculties incapable of giving an admissible confession under the dictates of the privilege against self incrimination in the Fifth Amendment as applied to the states through the Due Process Clause of the Fourteenth Amendment to the Constitution. The two federal courts evidently were convinced that despite the facts that the defendant's drunkenness was self-induced, that the statements he made were volunteered and, indeed, as it appears from the record, the admissions were foisted upon the police, that the confessions were subsequently shown to be reliable and truthful, nevertheless, his words were not the product of "the unfettered exercise of his own will." This is certainly a curious proposition in that, at least, it appears to make it impossible for any person who passes muster under any of the currently accepted legal tests of sanity to admit guilt if his own self induced mental state induces such admissions. To be legally capable of committing a crime and at the same time be legally incapable of confessing it is a bizarre, and therefore doubtful, proposition. Practically, such a holding would serve to exclude confessions of criminals fully aware of what they are saying, and able to meticulously describe criminal acts they have committed, merely because they have consumed enough alcohol to trigger their own incautious tongue. It is unclear from the words of the two federal courts just what effect, if any, what degree of intoxication has upon voluntariness and admissibility of statements.

The outlook of the North Carolina Supreme Court upon a confession, given under the circumstances indicated *supra*, is almost diametrically opposed to that of the District Court for the Middle District of North Carolina and the Court of Appeals for the Fourth Circuit. Taking the two high state court decisions together (See Appendix A and B) it is clear that the court adheres to the general rule on the subject as it is summarized and stated at 69 A.L. R. 2d 364:

> "The Courts are agreed that proof that one who has confessed to crime was intoxicated at the time of making

> a confession goes to the weight and credibility to be accorded to the confession, but does not require (at least where the intoxication does not amount to mania, and the intoxicants were not furnished the accused by the police or other government officials) that the confession be excluded from evidence."

Instead of automatically ruling that the confession was involuntary because Logner was intoxicated at the time he gave the admissions, the North Carolina Supreme Court sought to properly apply the law on the point as accepted prior to the *MIRANDA v. ARIZONA* decision. That is, all the attendent circumstances surrounding the confession were viewed to see if the elusive due process of law standard had been violated. 12 L. Ed. 2d 1340, 1342. The court's examination revealed that Logner, not at all inexperienced with the police, was properly advised of his rights to remain silent, to retain counsel and that his remarks might be used against him; that a full hearing was afforded him on the question of voluntariness in the absence of the jury; that no coercion of any kind was applied to secure the admissions, but on the contrary, that Logner sought to confess his guilt even upon the repeated warnings as to his rights by the police; that the confessions subsequently proved to be reliable and truthful. Regarding due process as somewhat akin to "fair play" the court essentially decided that there was nothing shocking to the conscience or fundamentally unfair about the judicial procedure employed in this case. The relevancy and weight of the defendant's statements was properly left with the jury. *STATE v. ISOM*, 243 N. C. 164 (1955).

The State of North Carolina respectfully maintains that the North Carolina Supreme Court correctly applied the federal test for determining voluntariness at that time, and that said test was not only constitutionally sound but practical and reasonable in that police as guardians of the public peace were not required to close their ears to incriminating statements made by criminals fully in touch with reality.

2. In *PEOPLE v. SCHOMPERT*, 19 N. Y. 2d 300, 279 N. Y. S. 2d 515 (1967), the defendant, diagnosed as a psychotic and an alcoholic, called the police to a public bar and there confessed to burglary. The police officers testified that Schompert was intoxicated to the verge of delirium tremens, and, in fact, entered that state shortly after relating the details of his crime. The Court of Appeals of New York, six justices adhereing to the majority opinion and the Chief Justice concurring, and without any dissents, held the confession to be voluntary. The Court pointed out that the record established that the defendant was "sufficiently 'in touch with the realities of his situation' when he made his confession so that one was entitled to accept it as reliable despite defendant's evident advanced intoxication." The Court specifically rejected the policy argument that alcoholic intoxication alone should preclude the use of a confession. It was carefully pointed out that where trustworthiness was the concern in determining the voluntariness of the confession (where such factors as coercion and unfairness are not involved) the test becomes one of reliability which may be met by looking to subsequent events and other factors. For examples, the New York Court said that accuracy might be established by subsequent events while incapacity to confess might be shown where a confessant was so drunk that he was unable to appreciate the nature and consequences of his statements.

It would appear that Schompert was under the influence of alcohol to a greater degree than was Logner, yet the distinguished New York court found the confession to be voluntary. Schompert, it was determined, knew what he was saying as was established by the subsequent verification of his statements. But Logner's confession also proved to be reliable, and, although he was mistaken in his belief that all elements of his confession had to be proven, nevertheless, he freely chose to incriminate himself. It is submitted that the two cases are factually indistinguishable, and that this clear conflict in legal results should be resolved.

(3) In the often cited case of *MCAFEE v. UNITED STATES*, 72 App. D. C. 60, 111 F. 2d 199, cert. denied 310 U. S. 643, 60 S. Ct. 1094 (1940), the Court of Appeals of the District of Columbia decided that defendant's claim (one among several) that his being drunk rendered his confession to homicide involuntary was without merit. The court declared that the controlling law in the District of Columbia on this issue was derived from *BELL v. UNITED STATES*, which stated:

> ". . . that the drunken condition of an accused when making a confession, unless such drunkenness goes to the extent of mania, does not affect the admissibility in evidence of such confession, but may affect its weight and credibility with the jury." 60 App. D. C. 76, 47 F. 2d 438, 74 A. L. R. 1098.

The law on the voluntariness of a confession in the District of Columbia Court of Appeals appears to conflict with the position on that legal question taken by the Court of Appeals for the Fourth Circuit. The need for uniformity in the application of the federal law magnified by an even greater necessity for uniformity when the federal standard and the state standard are the same, require that clarification on this particular legal point be given by the Supreme Court of the United States.

(4) The United States Court of Appeals for the Fourth Circuit's decision in *LOGNER v. STATE OF NORTH CAROLINA* also differs with other authority including the Supreme Court of the State of California. In *PEOPLE v. BYRD*, 42 Cal. 2d 200, 266 P. 2d 505 (1954), the defendant was charged and convicted of first degree murder. Many issues were raised on appeal and addressed by the state's highest court. One of these related to taped conversations between the defendant and the district attorney, in which the defendant made certain confessions. Byrd argued that the statements were involuntary because he was under the influence of alcohol at the time he

uttered them. The court rejected this contention and relied in turn on the rule in *PEOPLE v. DORMAN*, which said succinctly:

> "Even if such a condition did exist, it did not make the confessions inadmissible. This court has declared that intoxication at the time of making confessions does 'not deprive the confessions of the required spontaneity to make them free and voluntary.' " 28 Cal. 2d 846, 854, 172 P. 2d 686, 691 (1946)

The Supreme Court of the United States greatly modified the required procedure for warning individuals of their constitutional rights upon arrest in the landmark case of *MIRANDA v. ARIZONA*, 384 U. S. 486, 86 Sup. Ct. 1602, 16 L. E. 2d 694 (1966). While that decision does not apply to *LOGNER v. STATE OF NORTH CAROLINA*, it is noteworthy that perhaps even under the more stringent test of Miranda the decisions of the Supreme Court of North Carolina should not have been disturbed. The Court in *MIRANDA* emphasized that not all confessions are inadmissible. Any statement given freely and voluntarily "without any compelling influences" is admissible; and, further, any kind of statements volunteered to the police are not barred by the Fifth Amendment: It is respectfully maintained that Logner's confessions would be admissible under Miranda as they were volunteered and in no way obtained by coercion.

Legal scholars, particularly in the field of evidence, have also looked at confessions given while intoxicated in a manner contrary to the Fourth Circuit Court of Appeals opinion in Logner. Wigmore, for example, is concerned about the confessant's testimonial capacity and would use subsequent facts to confirm whether or not to admit the confession. 3 Wigmore, Evidence [3d. ed.] § 856 at 338. *See* also sections 841, 822, and 2 Wharton, Criminal Evidence [12th ed] § 388 at *p. 122*. To

the same effect see 79 *HARV. L. REV.* 935, 968-969 (1965-1966).

Therefore, it is respectfully submitted that this Court should exercise its jurisdiction in granting the writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit in this case in order that the conflicts between the decision of the Fourth Circuit Court of Appeals and the decisions of the North Carolina Supreme Court, the Court of Appeals of New York, the Supreme Court of California, and the United States Court of Appeals for the District of Columbia may be resolved on the question presented herein.

REASONS FOR GRANTING THE WRIT

On Issue of Effect of Amended Habeas Corpus Statute.

The District Court was without power to grant the Writ of Habeas Corpus as the defendant did not bring his case within any of the provisions of Section 2254, Title 28 United States Code, as amended effective November 2, 1966 (27 days before the District Court's decision).

It appears that the order entered by the Court was entered not pursuant to the section of the code as amended, but rather pursuant to the language of that section as it existed before amendment.

It seems clear that the jurisdiction of the District Court in this matter is defined and limited by the terms of the Statutes particularly Section 2254 of the United States Code. As Chief Justice Stone said in *LOCKERTY v. PHILLIPS*, 319 U. S. 182 (1943); "All Federal Courts, other than the Supreme Court, derived their jurisdiction wholly from the exercise of the authority to 'ordain and establish' inferior courts, conferred on Congress by Article III Sec. 1, of the Constitution. The Congressional power to ordain and establish inferior courts includes the power of investing them with jurisdiction from them in the

exact degree and character which to Congress may seem proper for the public good.'"

The fact that the statute was amended after the Petition was filed in this Court and after the Habeas Corpus hearing, but before the order was entered, does not alter the controlling effect of the provisions of the statute as amended. This point has been established by a number of decisions by the United States Supreme Court and several Circuit Courts. EX PARTE MCCARDLE 73 U. S. 318 (1868), 74 U. S. 506 (1869). In *BRUNER v. UNITED STATES*, 343 U. S. 112 (1952) the plaintiff sued the United States in the District Court on the theory that he was due overtime compensation. The action was brought in 1948. At that time, the revelant statute gave jurisdiction to the District Court limited to persons other than "officers of the United States". After certiorari had been granted by the Supreme Court, the Statute was amended to limit the jurisdiction of the District Court so that it did not have jurisdiction of actions brought under such circumstances by "officers or employees of the United States." The Supreme Court held that the statute as amended was controlling as to the Jurisdiction of the District Court. To like effect see EX PARTE COLLETT, 337 U. S. 55, *HAMM v. ROCK HILL*, 379 U. S. 306, *ORR v. UNITED STATES*, 174 F-2nd, 577 (second circuit 1949), *BOWLES v. STRICKLAND*, 151 F-2nd 419 (fifth circuit 1945), *HODLEY v. SAN FRANCISCO*, 194 U. S. 4.

Therefore it appears evident that the District Court erred in assuming the power of issuing a Writ of Habeas Corpus after the Federal Habeas Corpus Statute had been amended, and the United States Fourth Circuit Court of Appeals was likewise in error in affirming the issuance of such Writ. And it is respectfully submitted that this Court should exercise its jurisdiction in granting the Writ of Certiorari to review the decision of the United States Fourth Circuit Court of Appeals in this

case so that the correct meaning and effect of Section 2254, Title 28 United States Code (as amended) may be determined and known.

Respectfully submitted,

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